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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/308,047    07/01/99    KUBEIN-MEESENBURG    D    1920/47784

QM32/0620  
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WASHINGTON DC 20005

EXAMINER
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SMITH, J

ART UNIT	PAPER NUMBER
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3732

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DATE MAILED:

06/20/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/308,047

Applicant(s)  
Kubein-Meesenburg et al

Examiner  
Jeffrey A. Smith

Group Art Unit  
3732



☒ Responsive to communication(s) filed on Jul 1, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire THREE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-3 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-3 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Jul 1, 1999 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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**DETAILED ACTION**

***Drawings***

✓ The drawings are objected to because:

"D" (two occurrences) (Fig. 2) should be accompanied by appropriate subscripts; and

"9" (Fig. 9) should read as --10--.

Correction is required.

Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect can be deferred until the application is allowed by the examiner.

***Specification***

The disclosure is objected to because of the following informalities:

✓ "second [sic]" (page 2, line 3) should be deleted;

✓ the brief description of Figures 1-11 at page 4 should provide more specifics with regard to what the Figures depict;

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" $\alpha = \alpha_2 + \alpha_1$ " (page 4, line 21) should read as -- $\alpha = \alpha_2$

✓ -  $\alpha_1$ -- as per the mathematical description of an overlaid dimeric chain at page 2, lines 22-27);

and

"contact line F2" (page 5, line 14) should read as

✓ --contact line L2--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are largely narrative and do not clearly set forth the structure of the artificial joint. Moreover, language such as "in particular endoprosthesis for replacement of natural joints" and "and where the second joint side is designed accordingly" is indefinite as it is not clear what purpose or further limitation this language presents. Additionally, the format of the claim is awkward and appears to be a direct translation of the priority document. The Examiner suggests placing the claims in a format more readily accepted for US

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prosecution. The claims have been interpreted as best understood. Applicant must make the appropriate corrections.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-3 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Pappas (U.S. Patent No. 5,507,820).

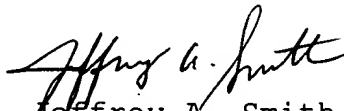
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The additional references cited disclose various features which are similar to those disclosed by Applicant.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is (703) 308-3588.

  
Jeffrey A. Smith  
Primary Examiner  
Art Unit 3732

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June 18, 2000